



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152527

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 07, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly decreased the Petitioner's FS benefits effective October 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Kris Schmidt

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner completed a FS review on August 22, 2013. On August 29, 2013, the agency received a verification from the Petitioner's employer stating that her earned income is \$2.33/hour, 25 – 30 hours/week with gross tips/pay period of \$450. Petitioner is paid bi-weekly. On August 30,

2013, the agency received pay statements for the pay periods of June 24, 2013 – July 7, 2013 and July 8, 2013 – July 21, 2013.

3. On August 9, 2013, the agency issued a Notice of Decision to the Petitioner informing her that effective October 1, 2013, her monthly FS benefits will decrease from \$367 to \$257. The agency budgeted an average 55 hours/pay period and average tips of \$450/pay period.
4. Petitioner's household size is two and her rent expense is \$500.
5. On October 1, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which is \$152 per month for a two-person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FoodShare Wisconsin Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FoodShare Wisconsin Handbook, App. 4.6.7.

In a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the Department to demonstrate that it correctly computed the Petitioner's FS allotments, and the Petitioner must then rebut this evidence with her own evidence showing the agency was incorrect.

In this case, the agency budgeted the Petitioner's earned income based on an average given the information submitted from the employer. The pay statements submitted at the time of renewal were more than 30 days old so the agency was unable to use those statements. Based on the employer verification, the agency calculated gross monthly income of \$1,243.02 (\$2.33/hour x average 55 hours/pay period + \$450/pay period tips x 2.15). The agency applied an earned income deduction of \$248.60, a standard deduction of \$152 and a shelter deduction of \$478 (\$500 + utility standard of \$450 – 50% of adjusted income). Net adjusted income was calculated as \$364.42. Based on this net adjusted income, the agency properly calculated monthly benefits of \$257 (Maximum allotment of \$367 – 30% of adjusted net income).

The Petitioner testified that her circumstances have changed since September when the agency calculated her benefits. The job she has is seasonal and her paychecks have decreased in amount. Petitioner was advised to report any decrease in her income by submitting pay statements to the agency for the previous 30 days. She did bring pay statements to the hearing for the pay periods of September 16, 2013 – September 29, 2013 and September 30, 2013 – October 13, 2013. These statements did not represent the previous 30 days of pay. I note that the latter pay statement does reflect fewer hours worked. Again, the Petitioner is advised to submit pay statements to the agency in a timely manner for consideration in calculating her monthly benefits.

Based on the information provided to the agency at the review, it properly calculated the Petitioner's monthly FS benefits at \$257 effective October 1, 2013.

CONCLUSIONS OF LAW

The agency properly reduced the Petitioner's FS benefits to \$257/month effective October 1, 2013.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of November, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 26, 2013.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability